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June 15, 2020

VIA ECF

Hon. Katherine Polk Failla  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, NY 10007

**MEMO ENDORSED**

Re: ***James Murphy v. The Halal Guys, Inc.***  
**Docket No. 19-cv-10334**

Dear Judge Failla:

This firm represents Defendant The Halal Guys ("Defendant") in the above-referenced matter. We write to address two (2) issues in this matter. First, Defendant writes to request permission to move to dismiss Plaintiff's complaint as its response to Plaintiff's complaint. Second and in the interim, while an appeal of several identical matters is pending, Defendant, jointly with Plaintiff, requests that this Court stay this action pending the resolution of an appeal in an identical matter in *Dominguez v. Banana Republic, LLC*.<sup>1</sup>

### **I. Background**

As background, Plaintiff commenced this action on November 6, 2019 alleging that Defendant violated the Americans with Disabilities Act ("ADA"), New York State Human Rights Law ("NYSHRL"), and New York City Human Rights Law ("NYCHRL") by failing to offer Braille gift cards. On April 3, 2020, the parties made a second request to adjourn the initial conference as they engaged in settlement negotiations. However, to date, the parties have not been able to resolve the matter.

At this juncture, Defendant is filing this correspondence to request permission to move to dismiss Plaintiff's complaint as its response to Plaintiff's complaint. As Your Honor is aware, Judge Gregory H. Woods, dismissed five identical Braille gift card lawsuits.<sup>2</sup> In his well-reasoned and thorough decisions, Judge Woods dismissed Plaintiff's allegations both on the basis that the Plaintiff lacked standing and on the merits.

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<sup>1</sup> A copy of Judge Gregory H. Woods' decision dismissing the *Dominguez v. Banana Republic* case is annexed hereto as Exhibit A.

<sup>2</sup> See *Dominguez v. Banana Republic, LLC*, No. 19-cv-10171 (GHW); *Murphy v. Kohl's Department Stores, Inc.*, No. 19-cv-09921 (GHW); *Mendez v. AnnTaylor, Inc.*, No. 19-cv-10625 (GHW); *Calcano v. Swarovski North America Ltd.*, No. 19-cv-10536 (GHW); and *Dominguez v. CKE Restaurants Holdings, Inc.*, No. 19-cv-10816 (GHW).

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## **II. Judge Woods' Decision**

According to Judge Woods' decision, which addresses many of the arguments that Defendant anticipates raising in its motion to dismiss, plaintiffs lacked standing to bring an action because they could not establish a genuine intent to return to any of the defendants' retail locations. However, Judge Woods did not stop his analysis based on the standing argument and eviscerated Plaintiff's allegations on the merits.

First, Judge Woods held that Braille gift cards constitute a "specialty good" that pursuant to Department of Justice regulations are not required to be made available as the ADA only regulates access to public places of accommodation. Second, Judge Woods found that plaintiffs' claims that defendants failed to provide auxiliary aids were without merit since plaintiffs never requested any auxiliary aid other than a Braille gift card.

## **III. Stay Pending Appeal**

Since issuing those decisions, plaintiffs in those actions have filed appeals before the Second Circuit Court of Appeals, which are currently pending. In several other pending actions, including several cases before Your Honor, district court judges have stayed the proceedings pending the resolution of the appeal.<sup>3</sup> The parties in this action believe that the ultimate decision issued by the Second Circuit will materially impact this litigation. Staying this matter will conserve both litigant and judicial resources while the Second Circuit considers Plaintiff's allegations. The parties therefore respectfully request that Your Honor stay this action pending the resolution of the pending appeal.

We thank the Court for its attention to this matter.

Sincerely,  
s/Jeffrey Douglas  
JEFFREY G. DOUGLAS

JGD

cc: All counsel of record (via ECF)

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<sup>3</sup> See, e.g., *Tucker v. Ultra Beauty, Inc.* No. 19-cv-09845 (KPF); *Calcano v. Best Buy Co. Inc.*, No. 19-cv-11467 (PGG) (OTW); *Sosa v. Oxford Industries, Inc.*, No. 19-cv-11350 (PAE) (DCF); *Calcano v. Uniqlo USA LLC*, No. 19-cv-10438 (JGK).

Application GRANTED. This matter is hereby STAYED until further order of the Court. The parties are ORDERED to file a joint letter regarding proposed next steps in this matter within one week of the issuance of a decision by the United States Court of Appeals for the Second Circuit in the cases identified in this letter.

Dated: June 16, 2020  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE